

**SUPREME COURT OF NIGERIA**  
17TH FEBRUARY, 2006. SC. 59/2002  
**CORAM:- S. U. ONU, A. I. KATSINA-ALU, N. TOBI,**  
**G. A. OGUNTADE, M. MOHAMMED, JJSC**

BHOJSONS PLC ..... PLAINTIFF/APPELLANT  
AND  
GEOFFREY K. DANIEL-KALIO .... DEFENDANT/RESPONDENT

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APPEALS - Damages - Issues - Where issue of trial court's failure - To assess and award damages - Was not placed before the Court of Appeal - Vide any ground of appeal - It cannot pronounce thereon (H1)

APPEALS - Grounds of appeal - Purpose of - Cross appeal - Any issue not raised in a ground of appeal - Or cross appeal - Is not before the court (H2)

JUDGMENTS - Presumption of correctness - Appeals - Burden of showing that a judgment is not correct - Is always on the appellant (H3)

JURISDICTION - Argument - Appeals - Statutes conferring appellate jurisdiction - Must be followed - And a complaint not predicated on any ground - Cannot be argued (H4)

COURTS - Issues - Judgments - Must be confined to issues raised by the parties - For court to go outside such issues - May occasion miscarriage of justice (H5)

APPEALS - Cross appeal - Issue - That has become academic or hypothetical - Will be struck out by the Supreme Court (H6)

**FACTS**

The plaintiff/appellant alleged that it had a thirty years lease with the defendant/respondent in respect of Number 25 Aba Road Port Harcourt. While the term of lease was still pending, respondent sued the appellant

before a Rent Tribunal claiming possession of the property. Possession was granted to the respondent who levied execution on the property causing heavy losses of business, profit and good will. Appellant therefore filed a claim against the respondent seeking a declaration that the execution of judgment levied against it was wrongful, null and void and ought to be set aside. It also claimed N50,000,000.00 special and general damages against the respondent. The respondent denied leasing the property for 30 years to the appellant, claimed that the appellant was a yearly tenant whose tenancy was duly determined by a notice to quit and the action instituted before the Rent Tribunal. He stated that execution was levied without causing any damage to property.

At the close of the hearing the Trial court refused and dismissed all the claims of the appellant. It held that it was not necessary to talk about damages, special or general as the appellant failed to prove its case. Aggrieved by this decision, the appellant appealed to the Court of Appeal challenging the decision of the Trial Court. Appellant filed no ground of appeal challenging the trial court's failure to consider and award damages to it. The Court of Appeal gave judgment in favour of the appellant holding that the execution levied against it was wrongful. But that court declined to wade into the complaint on damages as it was not supported by any ground of appeal. Appellant has further appealed to the Supreme Court, while the respondent cross appealed.

**ISSUE FOR DETERMINATION**

*“(i) Whether the lower court was right in declining to assess and award damages to the appellant.*

**HELD** (Unanimously dismissing the appeal and striking out the cross appeal per **MOHAMMED JSC**)

***APPEALS - Damages - Issues***

1. In other words to say it in plain language, there was no appeal by the appellant against the decision of the trial High Court refusing or dismissing its specific claim for N50,000,000.00 damages broken down into special and general damages placed before the Court of Appeal for determination in the appellant’s appeal heard by that court.

The position of the law in the situation in which the Court of Appeal found itself in the instant case, it would appear that the Court had rightly heeded the warning given by this court in the case of *Chief Ebba v. Chief Ogodo & Anor* (1984) 4 S.C. 84 at 112 where the court said-

*“..... it should be plain to a Court of Appeal that when an issue is not placed before it, it has no business whatsoever to deal with it. A Court of Appeal is not a Knight errant looking for skirmishes all about the place.”*

The issue is simply that there being no appeal against the decision of the trial High Court declining to assess and award special and general damages to the appellant, there was no issue before the Court of Appeal to enable it evaluate any evidence on record on that claim. It is trite and well settled that the Court of Appeal is only entitled to consider an appeal on the grounds of error of law or fact committed by the trial court placed before the Court of Appeal in grounds of appeal filed. An appellant cannot without leave of court be heard on any other grounds.

Definitely, the Court of Appeal cannot pronounce on issue or finding on which the parties have not appealed against. (p. 622 C/H)

### ***Grounds of appeal - Purpose of***

2. The whole purpose of grounds of appeal is to give notice to the respondent of the errors complained of. Thus where an appellant relies on any ground, this must be properly raised either by way of a ground of appeal, or as a cross-appeal in case of a respondent. Any issue not raised in a ground of appeal in this manner is clearly not before the court. Accordingly, it is not open to the court to raise an issue which the parties have not raised. It is also the law that where a court decides to raise such an issue because it is material for the determination of the appeal before it, the parties must be given an opportunity to argue the point before any decision is taken on it as was stated in *Kuti v. Balogun* (1978) 1 SC 53. Therefore in line with these decisions, it is quite obvious that the Court below was well guided when it refused to consider and determine the issue of general and special damages claimed by the appellant at the trial court which was not properly raised in the appellant's appeal before it in the

absence of any cross-appeal by the respondent on the subject. (p. 623 D)

***JUDGMENTS - Presumption of correctness***

3. Furthermore, the proposition is both elementary and fundamental to our  
 B judicial system that there is a presumption that the judgment of the trial  
 court is correct, and the burden of showing the contrary is always on the  
 appellant. See Williams v. Johnson (1937) 2 WACA 253; Kisiredu & Ors  
 v. Dompkeh & Ors (1935) 2 WACA 286. Applying the principles in these  
 C decisions to the sole issue arising for determination from the two grounds  
 of appeal filed by the appellant in this appeal, it is quite clear that the Court  
 of Appeal had no jurisdiction to raise and consider not to talk of the  
 determination of the issue of the appellants claim for special and general  
 damages which was not placed before that court for determination in the  
 D appeal. (p. 623 H)

***Statutes conferring appellate jurisdiction***

4. The appellate jurisdiction of the Court of Appeal being statutory, must  
 E be exercised in accordance with the statutes conferring the  
 jurisdiction particularly the provisions of the Constitution. Therefore  
 if a finding or decision of a trial court whether on an issue of fact or law  
 is not challenged in an appeal to the Court of Appeal, such finding or  
 F decision, rightly or wrongly, must not be disturbed in the hearing of the  
 appeal. See Oshodi v. Eyifunri (2000) 13 NWLR (pt. 684) 298 at 352.  
 In similar vein, it is also a cardinal principle of law in courts exercising  
 appellate jurisdiction that before the findings or decisions of a trial court  
 G can be contested at all, there must be a ground of appeal complaining of  
 the inadequacies in the findings or decisions. Without such ground of  
 appeal, the findings or decisions stand and no argument to undermine  
 them, no matter even indirectly, will be entertained by the Court of Appeal.  
 (p. 624 D)

H

***COURTS - Issues - Judgments***

5. It should not be forgotten that in the determination of disputes between  
 parties in court, the court must ensure that its judgment is confined to the

issues raised by the parties. See Commissioner for Works Benue State v. Devcon Development Consultants Ltd. (1988) 3 NWLR (pt. 83) 407; Nigerian Housing Development Society Ltd. v. Mumuni (1977) 2 SC 57.

In the case at hand, the appellant not having raised the issue of his complaint on the manner the trial High Court dealt with the question of his claim for general and special damages in a ground of appeal, the lower court would have committed a breach of the principle of law stated in the cases mentioned, if it had gone on to consider the issue. This is also in line with the requirement of the law that an appellate court must confine itself to the issues raised by the parties before it. In other words it is not open to the appellate court to raise an issue which the parties did not raise themselves in the course of the hearing of the appeal. If however the appellate court decides to or feels inclined to raise an issue for whatever reason, that court should give the parties an opportunity of making their comments upon it before taking a decision on such issue. To do otherwise will be to deny the parties the opportunity of being heard and lead to a miscarriage of justice. (p. 625 A)

### ***Cross appeal - Issue - That has become academic***

6. In view of the decision I have arrived at in the consideration of the main appeal which I have dismissed, the need to look at the cross-appeal and the determination of whether the execution of a valid judgment of a court levied before the statutory period allowed under the law is illegal or merely irregular, has certainly become hypothetical or academic which this court has long refrained from entertaining. Therefore this court is not bound in law to deal with the cross-appeal which accordingly is hereby struck out. (p. 626 A)

## **NOTABLE POINT OF INTEREST**

### **TOBIJSC**

#### ***1. Courts do not dabble into issues not placed before them***

Grounds of Appeal are the complaints of the appellant on the judgment-appealed against. They are the pillars on which the entire appeal stand and an appellate court cannot go outside them in search of greener pastures for

any of the parties. Where an issue before a trial court is not raised by a ground of appeal, the issue cannot be taken by the appellate court because it is not before that court. Issues coming for adjudication before an appellate court are erected by the ground or grounds of appeal.

B Courts of law, like umpires in a game, cannot go outside the rules of the court and do things in the way they like. Courts are bound by the processes placed before them. They have no business to dabble with issues not placed before them. (p. 629 D)

C **REPRESENTATION**

F. C. Amadi Esq. with him N. Ozokoli Esq. for the plaintiff/appellant.  
Dejo Launikanra Esq. with him D. Ucheobi Esq. for the defendant/respondent.

D

**CASES REFERRED TO**

Chief Ebba v. Chief Ogodo & Anor (1984) 4 S.C. 84 at 112

Management Enterprises v. Otusanya (1987) 2 NWLR (pt. 55) 179

E Alii v. Alesinloye (2000) 6 NWLR (pt. 660) 177 at 212.

Adeyemi v. Olakunri (1999) 14 NWLR (pt. 638) 204 at 211

National Investments and Properties Ltd. v. Thompson Organization (1969) NMLR 99

F Kisiredu & Ors v. Dompheh & Ors (1935) 2 WACA 286

Folorunso v. Adeyemi (1975) 1 NMLR 128

Olusanya v. Olusanya (1983) 3 SC 41 (1983) 1 SCNLR 134

Ejowhomu v. Edok-Eter Mandilas Limited (1986) 5 NWLR (pt. 39) 1 at 30-31

G Ekpa v. Utong (1991) 6 NWLR (pt. 197) 258 at 285

Commissioner for Works Benue State v. Devcon Development Consultants Ltd. (1988) 3 NWLR (pt. 83) 407

Nigerian Housing Development Society Ltd. v. Mumuni (1977) 2 SC 57

H Adeniji v. Adeniji (1972) 1 All NLR (pt. 1) 278

Alli v. Alesinloye (2000) 6 NWLR (pt. 660) 177 at 211-212

Titiloye v. Olupo (1991) 7 NWLR (pt. 205) 519 at 534

Bamgboye v. University of Ilorin (1999) 10 NWLR (pt. 622) 290 at 330

**RULES REFERRED TO**

Court of Appeal Rules O. 3 r. 2

**LEAD JUDGMENT BY MOHAMMED JSC**

This is an appeal against the decision of the Court of Appeal Port Harcourt Division delivered on 11-5-2000 in which that court allowed the appeal of the appellant against the judgment of the High Court. At the High Court of Justice of Rivers State in Port Harcourt, the appellant in this appeal as the plaintiff in that court instituted an action against the respondent as the defendant and in paragraph 25 of the Statement of Claim, the following reliefs were sought:

*“25. WHEREFORE the plaintiffs claims against the defendant are as follows:-*

*(i) A declaration that the execution of judgment levied against the plaintiff by the defendant on the 4th day of October, 1993, at No. 25 Aba Road Port Harcourt within the jurisdiction of the Honourable Court pursuant to the judgment delivered the same day, 4th October, 1993 in Suit No. PRT/1041/92 was wrongful, illegal and therefore null and void and ought to be set aside.*

*(ii) The sum of N50,000,000.00 (fifty million naira) being Special and General Damages for loss suffered by plaintiff by reason of the wrongful and unlawful acts of the defendant. This amount is broken down as follows:-*

*(a) N6,775,815.61 for loss of goods and stocks and N4,227,217.38 incurred as a result of increase in rent. These sums, totalling N11,003,032.99 are hereby claimed as special damages.*

*(b) N20,250.00 representing the loss of profit for the remaining (9) nine years and N18,746,967.01 representing loss of business, goodwill and the high cost of reestablishing the business. These sums, totalling N38,996,967.01 are hereby claimed as general damages.*

*(iii) A declaration that the agreement made between the plaintiff and the defendant in 1972, confirmed by letters written by the defendant dated 14th February, 1972 and 27th April, 1974 in respect of No. 25 Aba*

*Road is valid and subsisting.*

*(iv) An injunction restraining the defendant by himself or his servants and/or agents from subletting the property to any person or body corporate until the determination of this suit.”*

B In the course of the hearing to pursue these claims at the trial High Court, the appellant called 3 witnesses who gave evidence on its behalf while the respondent testified in his own defence and called one other witness. The plaintiff/appellant’s case was that in 1972, it leased property at No. 25 Aba Road Port Harcourt from the defendant/respondent for the term of 30 years. The property was used as a supermarket and a warehouse. However, during the currency of the term of the lease, the defendant/respondent sued the plaintiff/appellant before a Rent Tribunal in 1992, claiming possession of the property which relief was granted by the Tribunal on 4-10-1993. On the orders of the Tribunal, its judgment was executed the same day against the plaintiff/appellant resulting in destruction of properties and causing heavy losses of business, profit and goodwill.

E On the part of the defendant/respondent however, he denied leasing the property for 30 years to the plaintiff/appellant. He claimed that the plaintiff/appellant was a yearly tenant whose tenancy was duly determined by a notice to quit. The action instituted at the Rent Tribunal was to claim possession of the property at the expiry of the notice to quit and judgment was given in favour of the defendant/respondent on 30-9-1993 which was executed on 4-10-1993 without causing any damage to property. After hearing addresses from the learned counsel, the learned trial judge delivered her judgment on 26-9-1996 in which she refused and dismissed all the claims of the appellant as plaintiff. Part of this judgment which is relevant in this appeal at pages 107-108 of the record reads:-

G *“In the case in hand each party had taken a firm stand as to what transpired in relation to the delivery of the judgment. It was necessary that some extra piece of evidence to break that impasse was most essential. The way out would have been the learned Magistrate testifying but then that is wishful thinking as he is now deceased. Therefore the clerk of Court who was present at both dates of 30/9/1993 and 4/10/1993 or even at only one*





*occasioned a miscarriage of justice when she held as follows:*

*'In the case in hand each party had taken a firm stand as to what transpired in relation to the delivery of the judgment., it was necessary that some extra piece of evidence to break the impasse was most essential .... Therefore the clerk of court who was present at both dates of 30/9/1993 and 4/10/1993 or even one of the dates to tilt the balance one way or the other was essential ..... The plaintiff failing to call that essential witness calls into effect the provisions of section 149(d) Evidence Act to the conclusion that if he had been called his evidence would not have been favourable. No mention was made as to what effort they made to bring any witness to settle that issue. The case being on a balance of probability that balance is in favour of the defence.'*

xx

## GROUND FOUR

*The Learned Trial Judge did not properly evaluate the evidence before her and failed to make a finding whether the execution of the judgment which was levied against the plaintiff on 4th October, 1993 was wrongful, illegal and a nullity despite abundance of evidence when:*

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

GROUND FIVE

*The learned trial judge erred in law when she declined jurisdiction to make a declaration to the rights of the parties which had been adversely affected by the wrong committed by the respondent.*

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GROUND SIX

*Judgment is against the weight of evidence."*

In its brief of argument, the appellant in the court below formulated three issues from the six grounds of appeal filed by it. The issues at page 121 of the record of appeal are:-

(i) Whether execution of the judgment on 4th October, 1993, is legal having regard to Order IV Rule 1(1) and (2) of the Judgments (Enforcement) - Rules made under section 94 of the Sheriffs and Civil Process Act, 1990.

(ii) Whether the fact that the plaintiff did not call as a witness the

clerk of the Rent Tribunal which ordered possession was fatal to the plaintiff's case.

(iii) Whether the learned trial court properly evaluated the evidence and made correct finding of the facts on the evidence led before her."

After hearing the appeal on the respective briefs of argument filed by the appellant and the respondent who also relied on the respondent's Notice Filed by him, the Court below in its judgment delivered on 11-5-2000, allowed the appeal but declined to wade into the complaint of the appellant on damages as that complaint was not supported by any ground of appeal. This is what Ikongbeh JCA said in his lead judgment at pages 168-169 of the record:-

*"On the whole, I hold that the learned judge adopted the wrongful approach to the handling of the case before her and came to the wrong conclusion on the first relief in the appellant's claim. She ought to have granted it. The appeal as it relates to that relief accordingly succeeds and is allowed by me. The order of the Judge, Odili, J., dismissing it is set aside and in its place I make the declaration sought.*

*I have examined the six grounds of appeal but found none attacking the conclusion of the learned Judge that 'it is there (sic) not necessary to talk about damages special or general as plaintiff failed to prove its case as required by law.' None of the three issues formulated on its behalf relate to it. Clearly, therefore, we have not been called upon to do anything about it. I say no more on that."*

It is against this judgment of the Court of Appeal that the appellant in that court who though was the successful party, was still dissatisfied with it and has now further appealed to this court principally on the failure of the Court of Appeal to consider its claim for damages. From the two grounds of appeal filed by the appellant, two issues were identified as follows in the appellant's brief of argument.

*"(i) Whether the lower court was right in declining to assess and award damages to the appellant.*

*(ii) Whether there exists on the record of the lower court enough evidence on which an assessment of Special and General Damages could be made in favour of the appellant."*

The respondent in his brief of argument saw the first issue in the appellant's brief of argument as the only issue arising for determination in the appeal. I entirely agree.

It was argued for the appellant that the duty to consider a claim for  
B award of damages is not exclusive to the trial court as an appellate court  
equally has a duty to deal with such issues on appeal. The case of Pavex  
v. Afribank (2000) 4 SC (pt. 11) 191 at 212 was called in aid. As for the  
power of the Court of Appeal to assess damages where a trial court failed  
C to do so on the face of the material available on record, reliance was placed  
on Overseas Construction v. Creek Ent. Ltd. (1985) 3 NWLR (pt. 13) 407.  
Finally, the appellant insisted that the court below was at liberty to consider  
the issue of damages even though it was not specifically made a ground  
of appeal as laid down in Anyim Mba & 2 Ors v. Agbafo Agu & Ors (1999)  
D 9 SC 73 at pages 80-83.

The respondent however contends that having regard to the six  
grounds of appeal and the three issues distilled from the grounds of appeal  
filed by the appellant, there was no appeal at all on the failure of the trial  
E court to consider the award of general and special damages; that the lower  
court was quite right in declining to look into the claim for general and  
special damages as it was rightly guided by the cases of Oshodi v. Eyifunmi  
(2000) 7 SCNJ 295 at 323; Adeyemi & Anor v. Olakunri & Ors (1999) 12  
F SCNJ 224 at 229; Lawani Alli & Anor v. Chief Gbadamosi Alesinloye &  
8 Ors (2000) 6 NWLR (pt. 660) 177 at 212 and Oshatoba v. Olujitan &  
Anor (2000) 5 NWLR (pt. 655) 159 at 170.

I have deliberately quoted in full earlier in this judgment the contents  
of paragraph 25 of the appellant's statement of claim as the plaintiff at the  
G trial High Court to bring out in full view, the four items of reliefs claimed.  
The relief which is the subject of this appeal is the second one in which  
the appellant claimed N50,000,000.00 as special and general damages and  
proceeded to give the break down of the various heads of the items of  
H damages claimed against the respondent arising from the wrongful  
execution of the judgment of the Rent Tribunal. The other three remaining  
reliefs claimed comprised a declaratory relief that the execution of the  
judgment of the Rent Tribunal was wrongful, illegal, null and void, a

declaratory relief that the agreement entered between the parties in 1972 in respect of the leased premises No. 25 Aba road Port Harcourt was valid and subsisting, and an injunction restraining the defendant from subletting the property to other persons until the determination of the appellant's action. It is quite clear from the part of the judgment of the trial court earlier B quoted in this judgment that all the four distinct reliefs sought by the appellant in the action against the respondent arising from the alleged wrongful execution of judgment, were refused and the entire action was dismissed.

In the appellant's appeal to the Court of Appeal against the judgment C of the trial High Court, the appellant was expected to vent out his grievances against that judgment in a Notice of Appeal containing the appropriate grounds of appeal outlining the aspects of the findings and decisions of the trial court it disagreed with in the judgment. This is in D accordance with Order 3 Rule 2 of the Court of Appeal Rules. These six grounds of appeal filed by the appellant challenging the correctness so to say, of the judgment of the trial court, have been earlier quoted in this judgment without the particulars. Running through these grounds of E appeal, it is quite plain that the appellant's complaint in grounds one and two centered on the execution of the judgment in suit No.PRT/1041/92 as to whether or not it was regular. The complaint in ground three on the other hand is on the failure of the trial court to make a finding as to the actual F date the said judgment was executed between 30-9-1993 claimed by the respondent and 4-10-1993 claimed by the appellant. As for ground four of the grounds of appeal, the appellant was merely complaining on the failure of the trial court to make a finding on the execution of the judgment from G the evidence on record. What ground five contains is a complaint on the failure of the trial court to deal with the declaratory reliefs sought arising from the alleged wrong committed by the respondent regarding the execution of the judgment against the appellant. The remaining ground, H ground six is an omnibus ground of appeal. It is trite that there are several decisions of this court warning parties particularly those in desire to exercise their right of appeal that such parties cannot hide behind an omnibus ground of appeal to raise specific questions on matters like issues

of damages, in the absence of specific grounds of appeal raising the questions. See Ndiwe v. Okocha (1992) 7 NWLR (pt. 252) 129 at 139-140. Although I have also quoted the three issues raised by the appellant in its brief of argument in the appeal at the court below presumably arising from the six grounds of appeal filed by it, it is not even possible in the correct application of the law on formulation of issues for determination from the grounds of appeal, to expect any of the three issues of the appellant earlier quoted in this judgment to embrace a complaint on the failure of the trial court to consider and determine the appellant's claim for general and special damages. This is because there was no such complaint in any of the six grounds of appeal filed by the appellant to question the decision of the trial High Court in an appeal before the court below. **In other words to say it in plain language, there was no appeal by the appellant against the decision of the trial High Court refusing or dismissing its specific claim for N50,000,000.00 damages broken down into special and general damages placed before the Court of Appeal for determination in the appellant's appeal heard by that court.**

The position of the law in the situation in which the Court of Appeal found itself in the instant case, it would appear that the Court had rightly heeded the warning given by this court in the case of Chief Ebba v. Chief Ogodo & Anor (1984) 4 S.C. 84 at 112 where the court said-

*"..... it should be plain to a Court of Appeal that when an issue is not placed before it, it has no business whatsoever to deal with it. A Court of Appeal is not a Knight errant looking for skirmishes all about the place."*

To this end, it seems to me that the argument of the learned counsel to the appellant based on the decisions of this court in Pavex v. Afribank (supra) and Overseas Construction v. Creek Ent. Ltd. (supra) that the trial High Court having failed to assess and make award of damages, the Court of Appeal can rightly do so provided there are sufficient material on record to do so, is completely off the point. The learned counsel to the appellant appears to have misunderstood the real issue involved in this matter. **The**

issue is simply that there being no appeal against the decision of the trial High Court declining to assess and award special and general damages to the appellant, there was no issue before the Court of Appeal to enable it evaluate any evidence on record on that claim. It is trite and well settled that the Court of Appeal is only entitled to consider an appeal on the grounds of error of law or fact committed by the trial court placed before the Court of Appeal in grounds of appeal filed. An appellant cannot without leave of court be heard on any other grounds. See *Management Enterprises v. Otusanya* (1987) 2 NWLR (pt. 55) 179 and *Alii v. Alesinloye* (2000) 6 NWLR (pt. 660) 177 at 212. Definitely, the Court of Appeal cannot pronounce on issue or finding on which the parties have not appealed against. See *Adeyemi v. Olakunri* (1999) 14 NWLR (pt. 638) 204 at 211. B C

It may be emphasized on this issue that the whole purpose of grounds of appeal is to give notice to the respondent of the errors complained of. See *National Investments and Properties Ltd. v. Thompson Organization* (1969) NMLR 99. Thus where an appellant relies on any ground, this must be properly raised either by way of a ground of appeal, or as a cross-appeal in case of a respondent. Any issue not raised in a ground of appeal in this manner is clearly not before the court. Accordingly, it is not open to the court to raise an issue which the parties have not raised. See *Inua v. Ntah* (1981) All NLR 576. It is also the law that where a court decides to raise such an issue because it is material for the determination of the appeal before it, the parties must be given an opportunity to argue the point before any decision is taken on it as was stated in *Kuti v. Balogun* (1978) 1 SC 53. Therefore in line with these decisions, it is quite obvious that the Court below was well guided when it refused to consider and determine the issue of general and special damages claimed by the appellant at the trial court which was not properly raised in the appellant's appeal before it in the absence of any cross-appeal by the respondent on the subject. D E F G H

Furthermore, the proposition is both elementary and fundamental to our judicial system that there is a presumption that the

**judgment of the trial court is correct, and the burden of showing the contrary is always on the appellant. See Williams v. Johnson (1937) 2 WACA 253; Kisiredu & Ors v. Dompkeh & Ors (1935) 2 WACA 286; Akesse v. Ababio (1935) 2 WACA 264; Folorunso v. Adeyemi (1975) 1 NMLR 128. Applying the principles in these decisions to the sole issue arising for determination from the two grounds of appeal filed by the appellant in this appeal, it is quite clear that the Court of Appeal had no jurisdiction to raise and consider not to talk of the determination of the issue of the appellants claim for special and general damages which was not placed before that court for determination in the appeal.**

Looking at this case from another angle, it is well settled that when an issue is not placed before an appellate court, that court has no business whatsoever to deal with it. One of the cases in mind is Olusanya v. Olusanya (1983) 3 SC 41 (1983) 1 SCNLR 134. **The appellate jurisdiction of the Court of Appeal being statutory, must be exercised in accordance with the statutes conferring the jurisdiction particularly the provisions of the Constitution. Therefore if a finding or decision of a trial court whether on an issue of fact or law is not challenged in an appeal to the Court of Appeal, such finding or decision, rightly or wrongly, must not be disturbed in the hearing of the appeal. See Oshodi v. Eyifunri (2000) 13 NWLR (pt. 684) 298 at 352.** Thus in the instant case, it would have been wrong for the Court below to have ventured into the issue of general and special damages which the trial court refused to consider, assess and award or refuse, when such a complaint was not brought before the court for determination in the appeal. **In similar vain, it is also a cardinal principle of law in courts exercising appellate jurisdiction that before the findings or decisions of a trial court can be contested at all, there must be a ground of appeal complaining of the inadequacies in the findings or decisions.** See Ejowhomu v. Edok-Eter Mandilas Limited (1986) 5 NWLR (pt. 39) 1 at 30-31 and Ekpa v. Utong (1991) 6 NWLR (pt. 197) 258 at 285. **Without such ground of appeal, the findings or decisions stand and no argument to undermine them, no matter even indi-**



rectly, will be entertained by the Court of Appeal.

It should not be forgotten that in the determination of disputes between parties in court, the court must ensure that its judgment is confined to the issues raised by the parties. See *Commissioner for Works Benue State v. Devcon Development Consultants Ltd.* (1988) 3 NWLR (pt. 83) 407; *Nigerian Housing Development Society Ltd. v. Mumuni* (1977) 2 SC 57; *Adeniji v. Adeniji* (1972) 1 All NLR (pt.1) 278 and *Alli v. Alesinloye* (2000) 6 NWLR (pt. 660) 177 at 211-212. In the case at hand, the appellant not having raised the issue of his complaint on the manner the trial High Court dealt with the question of his claim for general and special damages in a ground of appeal, the lower court would have committed a breach of the principle of law stated in the cases mentioned, if it had gone on to consider the issue. This is also in line with the requirement of the law that an appellate court must confine itself to the issues raised by the parties before it. In other words it is not open to the appellate court to raise an issue which the parties did not raise themselves in the course of the hearing of the appeal. If however the appellate court decides to or feels inclined to raise an issue for whatever reason, that court should give the parties an opportunity of making their comments upon it before taking a decision on such issue. To do otherwise will be to deny the parties the opportunity of being heard and lead to a miscarriage of justice. See *Aermachi S.P.A. v. A.I.C. Ltd.* (1986) 2 NWLR (pt. 23) 443 at 449; *Kuti v. Balogun* (1978) 1 SC 53 at 60; *Iri v. Erhurhobora* (1991) 2 NWLR (pt. 173) 252 at 265 and *Ndiwe v. Okocha* (1992) 7 NWLR (pt. 252) 129 at 139. On the application of these decisions of the court with which I am absolutely bound, there is no doubt whatsoever that in the circumstances of the present case in which the appellant in his appeal before the Court of Appeal did not appeal against the decision of the trial High Court for failing to consider and determine its claim for general and special damages, the court below was well guided in law in refusing to go into the issue. I find this appeal lacking in merit and the same is hereby dismissed. There shall be N10,000.00 costs against the appellant in favour of the respondent.

As for the cross-appeal of the respondent, the issue raised for its determination is whether an execution of a valid judgment of court levied before the statutory period allowed under the Sheriffs and Civil Process Act CAP 407, Laws of the Federation 1990, is illegal or merely irregular.

**In view of the decision I have arrived at in the consideration of the main appeal which I have dismissed, the need to look at the cross-appeal and the determination of whether the execution of a valid judgment of a court levied before the statutory period allowed under the law is illegal or merely irregular, has certainly become hypothetical or academic which this court has long refrained from entertaining.** See Titiloye v. Olupo (1991) 7 NWLR (pt. 205) 519 at 534; Bamgboye v. University of Ilorin (1999) 10 NWLR (pt. 622) 290 at 330, Eperokun v. University of Lagos (1986) 4 NWLR (pt. 34) 162 at 179 and Macaulay v. R.Z.B. Austria (2003) 18 NWLR (pt. 852) 282 at 300. **Therefore this court is not bound in law to deal with the cross-appeal which accordingly is hereby struck out.**

E

### ONUJSC

I have been privileged to read before now the judgment of my learned brother Mohammed, JSC just delivered. I am in full agreement with him that the appeal be and is hereby dismissed while the cross - appeal being a non -issue be and is accordingly struck out.

A word or two of mine in expatiation will do to put the ease in a clearer perspective thus:

The Plaintiff/Appellant claimed inter alia special and general damages for wrongful levy of execution of judgment for possession of premises at No. 25 Aba Road, Port Harcourt.

In the claim the Plaintiff/Appellant sought the following reliefs:

*“1. A declaration that the execution of judgment levied against the plaintiff by the Defendant on 4th October, 1993 at No. 25 Aba Road, Port Harcourt within jurisdiction of the Honourable Court pursuant to the judgment delivered the same day 4th October, 1993 in Suit No. PRT/1041/92 was wrongful, illegal and therefore null and void and ought to be set*

aside.

2. *The sum of N50,000,000.00 (Fifty Million Naira) being Special and General Damages for loss suffered by Plaintiff by reason of the wrongful and unlawful acts of the Defendant. This amount is broken down as follows: -*

i. *N6,775,815.61 loss of goods and stock and N4,227,217.38 incurred as a result of increase in rent. These sums totaling N11,003,032.99 are hereby claimed as Special Damages.*

ii. *N20,250,000.00 representing loss of profit for the remaining nine years and N18,746,967.01 representing loss of business, goodwill and the high cost of re - establishing the business. These sums, totaling N38,996,967.01 are hereby claimed as general damages.*

3. *A declaration that the agreement made between the Plaintiff and the Defendant in 1972, confirmed by letters written by the Defendant dated 14th February, 1992 and 27th April, 1974 in respect of No. 25 Aba Road is valid and subsisting. , .*

4. *An injunction restraining the Defendant by himself or through his servants and/or agents from subletting the property to any person or body corporate until the determination of this suit."*

*With the completion and exchange of pleadings by both sides, the learned trial Judge upon receipt of evidence and address of counsel, proceeded to dismiss the Plaintiffs suit on 26th September, 1996. The Plaintiff/Appellant filed an appeal on 23/12/96 against the said decision to the Court of Appeal, Port Harcourt containing six grounds of appeal. Briefs filed were exchanged by the Appellant and the Respondent (the latter also being Respondent therein). Issues were formulated and the lower court distilled its own two issues and finally gave judgment on 11th May, 2000 in favour of the Appellant albeit in part, as the claim for damages, special or general, was not considered by the lower court. It is this part of the decision that the Appellant having obtained leave of this Court dated 9th October, 2002, is appealing against.*

#### QUESTIONS FOR DETERMINATION

*The Appellant in the light of the six grounds of Appeal herein formulated, submitted two major questions as arising for determination as*

follows:

(i) *Whether the lower court was right in declining to assess and award damages to the Appellant.*

(ii) *Whether there exists on record of the lower court enough evidence on which an assessment of special and general damages could be made in favour of the Appellant.*

I wish to consider the two issues together by stating clearly that the learned trial Judge made a mess of the case. For instance, the judgment (Suit PRT/1041/92) was delivered on 4/10/96 and not on 30/9/96 as the trial court held. However, it was established that the trial court was correct when it held that the issue of damages, special or general was not argued before it, in which case, the court of Appeal would be raising such an issue *Suo motu*, (having been unpleaded) which it ought not to. See *Olusanya v. Olusanya* (1983) 3 SC 41 at 56/57 and *Odiase v. Agho* (1972) 1 All NLR (Pt. 1) 17. Thus, allowing the appeal against the decision of the trial court, the court below (per Ikongbeh, JCA) observed .....” I have examined the six grounds of appeal but found none attacking the conclusion of the learned Judge that “it is there (sic) not necessary to talk about damages special or general as plaintiff failed to prove its case as required by law.” None of the three issues formulated on its behalf relate to it. Clearly, therefore, we have not been called upon to do anything about it....” Sympathy, as herein invoked by the Appellant, being no forerunner of justice would not therefore in my view, avail the Appellant. The submission herein that there was in existence on record enough evidence on which an assessment of special and general damages could be made in favour of the Appellant being purely academic would no longer, in my view, arise. I therefore accordingly strike it out as a non - issue.

For the reasons I have given and the more comprehensive reasons articulated in the judgment of my learned brother Mahmud Mohammed, JSC with which I am in entire agreement, I too dismiss the main appeal and consequently, strike out the cross - appeal as being a non - issue.

**KATSINA-ALU JSC**

I have read before now in draft the judgment delivered by my learned brother Mohammed JSC. I entirely agree with his reasoning and conclusion.

For the reasons he has given, I also dismiss the appeal and strike out the cross-appeal with N10,000.00 costs in favour of the Respondent.

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**TOBI JSC**

I have read in draft the judgment of my learned brother, Mohammed, JSC, and I agree with him. As trial courts are bound by the pleadings before them, so are the appellate courts bound by the Notice and Grounds of Appeal.

Grounds of Appeal are the complaints of the appellant on the judgment- appealed against. They are the pillars on which the entire appeal stand and an appellate court cannot go outside them in search of greener pastures for any of the parties. Where an issue before a trial court is not raised by a ground of appeal, the issue cannot be taken by the appellate court because it is not before that court. Issues coming for adjudication before an appellate court are erected by the ground or grounds of appeal.

Courts of law, like umpires in a game, cannot go outside the rules of the court and do things in the way they like. Courts are bound by the processes placed before them. They have no business to dabble with issues not placed before them.

It is the case of the appellant that the Court of Appeal was wrong in declining to assess and award special and general damages to the appellant. It is the case of the respondent that the Court of Appeal was right in declining to assess and award special and general damages to the appellant because there was no appeal against the dismissal of the appellant's claim for special and general damages.

Justifying the court's reason for not taking the issue of assessing special and general damages, Ikongbeh, JCA, said in his judgment:

*"I have examined the six grounds of appeal but found none attacking the conclusion of the learned Judge that 'it is therefore not*

*necessary to talk about damages special or general as plaintiff failed to prove the case as required by law'. None of the three issues formulated on its behalf relate to it. Clearly, therefore, we have not been called upon to do anything about it. I say no more on that."*

B I have also examined the six grounds of appeal and the three issues formulated by the appellant and I do not see any of them complaining or challenging the issue of awarding special and general damages.

Learned counsel cited a number of cases. The first one is Pavex v. Afribank (2000) 4 SC (Pt. 11) 196 at 212 where this Court said:

C *"It is the duty of an appellate court to consider and .give the necessary appraisal to all piece of .',evidence forming part of the record before it."*

D This Court made the statement in a different context and it was in the context of the submission of counsel that the Court of Appeal should not have placed reliance on the minutes of the court official to determine whether Balogun, Ag. CJ, Lagos State High Court was aware that Adeniji, J. had heard and determined the case which led to the motions filed by the E appellants in the High Court of Lagos State.

The statement made by Ejiwunmi, JSC, in the case is good law and remains good law. I must say that it does not apply in the circumstances of this case because the issue before us is failure to raise the award of F special and general damages in the Court of Appeal. Before this court can consider and give the necessary appraisal to all pieces of evidence forming part of the record before it, there must be an appeal on the issue. The court has no business to deal with an issue not backed by a ground of appeal.

G The second case counsel cited is Overseas Construction v. Greek Ent. Ltd. (1985) 3 NWLR (pt. 13) 407 where this court held that where the trial court made no assessment of damages, an appellate court can make the assessment itself if there exists on the record (as in this case) enough evidence on which assessment can be based. Again, this is good H law and remains good law. Again, the case does not apply to the situation in this appeal. The decision of this court in Overseas Construction can only apply when there is a ground of appeal backing the assessment of special and general damages.

I think I can stop here. I dismiss the appeal. Having dismissed the appeal, there is not much in the cross-appeal. It is hereby struck out. I award N10,000.00 costs against the appellant in favour of the respondent.

B

### **OGUNTADEJSC**

The appellant was the plaintiff at the Port-Harcourt High Court. It was a tenant to the respondent in respect of a property at No. 25 Aba Road, Port-Harcourt. The plaintiff claimed that it had a lease from the defendant for 30 years. The defendant on the other hand stated that it was a yearly tenancy. On 4-10-93, the plaintiff was evicted from the property following a court judgment against it, which it claimed was given on the same 4-10-93. The plaintiff therefore brought a suit claiming: C

*“25. WHEREFORE the plaintiffs claims against the defendant are as follows: D*

*(i) A declaration that the execution of judgment levied against the plaintiff by the defendant on the 4th day of October, 1993, at No. 25 Aba Road, Port-Harcourt within the jurisdiction of the Honourable Court E pursuant to the judgment delivered the same day, 4th October, 1993 in suit No. PRT/1041/92 was wrongful, illegal and therefore null and void and ought to be set aside.*

*(ii) The sum of N50,000,000.00 (fifty million Naira) being Special F and General Damages for loss suffered by plaintiff by reason of the wrongful and unlawful acts of the defendant. This amount is broken down as follows:-*

*(a) N6,775,815.61 for loss of goods and stocks and N4,227,217.38 G incurred as a result of increase in rent. These sums, totalling N11,003,032.99 are hereby claimed as special damages.*

*(b) N20,250.00 representing the loss of profit for the remaining (9) H nine years and N18,746,967.01 representing loss of business, goodwill and the high cost of re-establishing the business. These sums, totalling N38,996,967.01 are hereby claimed as general damages.*

*(iii) A declaration that the agreement made between the plaintiff and the defendant in 1972, confirmed by letters written by the defendant*

*dated 14th February, 1972 and 27th April, 1974 in respect of No. 25 Aba Road is valid and subsisting.*

(iv) *An injunction restraining the defendant by himself or his servants and/or agents from subletting the property to any person or body corporate until the determination of this suit.”*

Parties filed and exchanged pleadings. The suit was heard by Odili J. as she then was. The trial judge on 26-9-96 dismissed plaintiffs suit. Dissatisfied, the plaintiff appealed to the Court of Appeal sitting at Port-Harcourt (hereinafter referred to as the ‘court below’). The court below in its judgment on 11-5-2000 felt that the trial judge was in error in the manner she evaluated the evidence. It also faulted her conclusion on the evidence. At pages 168-169 of the record, the court below said:

*“On the whole, I hold that the learned judge adopted the wrongful (sic) approach to the handling of the case before her and came to the wrong conclusion on the first relief in the appellant’s claim. She ought to have granted it. The appeal as it relates to that relief accordingly succeeds and is allowed by me. The order of the judge Odili J. dismissing it is set aside.*

*I have examined the six grounds of appeal but found none attacking the conclusion of the learned judge that ‘it is there (sic) not necessary to talk about damages special or general as plaintiff failed to prove its case as required by law’. None of the three issues formulated on its behalf relate (sic) to it. Clearly, therefore, we have not been called upon to do anything about it. I say no more on that.”*

It is pertinent to reiterate here that the plaintiffs first claim before the trial court was for a declaration that the execution levied on its properties by the defendant on 4-10-93 was wrongful. The pecuniary damages claimed under the second head of claim represented the quantum of loss, which the plaintiff claimed to have suffered as a result of the unlawful execution levied against his properties. The trial court should have proceeded to assess quantum of damages to be granted to the plaintiff had she been able to hold as the Court of Appeal later did that the execution levied was wrongful. In *Kareem & Ors. v. Ogunde & Anor.* [1972] All N.L.R. 75 at 80 (Reprint) this Court per Coker J.S.C. observed:

*“We must here repeat the advice which we had given on a number*



*of occasions that in cases involving the assessment of damages it is the duty of a trial court or tribunal to assess the damages proved and payable even if that court had decided that the entitlement of the claimant thereto had not been proved. This course obviates the necessity of sending back a case where no other course is justifiable merely for the purpose of assessing such damages and unduly mulcting the litigants in the expenses of unnecessary retrials.”*

The trial court failed to heed the warning given in the above case of the necessity to consider damages in a suit as an alternative in the event the conclusion reached by it on liability is held wrong by the appellate court. C

Be that as it may, the plaintiff in its appeal before the court below did not raise by its grounds of appeal the question of damages. It has been said several times in cases that the appellate jurisdiction of this Court and indeed the court below is derived from the Constitution of Nigeria and other relevant statutes. The appellate jurisdiction can only be activated when a valid ground of appeal is filed against the judgment appealed against. D

My learned brother Mohammed JSC has in the lead judgment E reproduced the six grounds of appeal raised by the plaintiff in the court below against the judgment of the trial court. None of them raises any complaint against the failure of the trial court to consider and award damages. It seems to me that the court below correctly refused to F consider the issue of damages not raised before it. A court has no jurisdiction to grant a relief not asked for - See Ugo v. Obiekwe [1989] 1 NWLR (Pt. 99) 566. Nor can a court consider the issue of award of damages under the omnibus ground that the judgment is against the weight G of evidence - See Sapara v. U.C.H. Board [1988] 4 NWLR (Pt. 86) 58.

When an appellate court in the course of hearing an appeal forms the impression that the court below made some errors, which ought to have been appealed against, but which were not, the appellate court must show aloofness and refuse to be drawn into a correction of errors not H appealed against. This point was lucidly made by this Court in Ejowhomu v. Edok-Eter Mandilas Ltd. [1986] 5 NWLR (Pt. 39) at 30-31 where Obaseki JSC said:

“A trial court may have committed grave errors in its judgment in a matter in a manner which stirs the informed mind of the appeal court Judges for correction, but it is settled law that if the parties to the matter are satisfied with the judgment, there is nothing the justices of the Court of Appeal can do. The Justices can only maintain studied silence or observe that there was no appeal before them on the point. If one of the parties is aggrieved and decides to appeal on grounds, which do not raise the grave errors, observed as issues to be debated and determined the Justices are still powerless and hamstrung in tackling the errors. But if the party adversely affected by the errors through careful reading, wisdom and vigilance, spots the errors and takes the matter on appeal on grounds complaining of those errors, it is only then and then only that the Court of Appeal under our law can deal with the issue. Generally, appeal courts without statutory provision, have no jurisdiction to disturb settled issues not properly brought as well as those not brought before them.”

It is for the above reason and the more elaborate ones in the lead judgment of my learned brother Mohammed J.S.C. that I would also dismiss this appeal as unmeritorious and strike out the cross-appeal. I award the same costs of N10,000.00 in favour of the respondent as in the lead judgment.

F

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